While this is so, Applicants note that if each of the references, in combination, fail to provide the claimed teachings, than the Examiner has failed as a fact finder to establish a prima facie case of obviousness for the claimed invention. Furthermore, applicants remind the examiner that it is her burden to establish the teaching of the prior art, not the part of applicants to point out the deficiencies of the references.

Applicants direct the Examiner's attention to the following quotation from the Board of Patent Appeals and Interferences in *Ex parte Olofsson*, Appeal 2007-2248 (January 31, 2008):

"Moreover, rejections based on 35 U.S.C. § 103 must rest on a factual basis. In making such a rejection, the Examiner has the initial duty of supplying the requisite factual basis and may not, because doubts that the invention is patentable, resort to speculation, unfounded assumptions, or hindsight reconstruction to supply deficiencies on the factual basis (emphasis added)". *In re Warner* 379 F2d 1011, 1017 (CCPA 1967)".

In the instant case, in response to Applicants' arguments about the deficiencies of their references, the Examiner argues, (Final Rejection page 8, paragraph 6) the combination of guaifenesin and polyvinylpyrrolidone is clearly taught by Dansereau et al reference, which also teach the two are blended, granulated and passed to a mesh of specific screen size (though not of same size as claimed in the instant claims).

However, independent claim 37 is more than a mere combination of guaifenesin and polyvinylpyrrolidone as urged by the Examiner. Rather, if the Examiner will even review independent claim 37 she will note that not only is there a limitation on the amount of the polyvinylpyrrolidone and guaifenesin but rather there are also other limitations clearly missing from the proposed combination of references.

For example, Applicants' claims restrict the amounts "from 0.2 to about 4% by weight by solubilizer, or disintegrant, or solubilizer and a disintegrant".

The examiner has not even pointed out, from among the cited references, where these limitations are found. As a fact finder in making a Section 103 (a) rejection, that is

her initial burden. Applicants can state that Dansereau is silent as to solubilizers, as are the other cited references. The use of disintegrants are discussed at column 5, line 9 *et. seq.* of Dansereau et al in which disintegrants such as crospovidone, as well as microcrystalline cellulose, are enumerated.

As shown in Example 1 at column 6 the "inner tablet", the tablet formed in a tableting press in Danseraeau et al contains both microcrystalline cellulose in the amount of 13.6% by weight, as well as the crospovidone, also in an amount of 13.6% by weight. This greatly exceeds the 4% by weight limit for disintegrants as in the present invention.

None of the other references solve this deficiency in Dansereau et al.

Rather than have Applicants argue that the references fail to teach this limitation, applicants respectfully request the Examiner to specifically point out where in Blume et al, Wilber et al or Troy or any of them in combination with Dansereau et al teach these features.

Applicants rely on the case authority cited above for the proposition that the Examiner has failed as a fact finder to establish a *prima facie* case of obviousness for the claimed invention and withdrawal thereof is respectfully requested. A prompt Notice of Allowance is earnestly solicited.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 14-1437, under Order

No. 8493.017.US0000. A Petition for Extension of time for One (1) month accompanies this Request ForReconsideration.

Respectfully submitted,

Date: May 25, 2010

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